Supreme Court U.S.
FILED
061324 MAR 30 2007
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No.

In The
Supreme Court of the United States

S. B. DAVIS, JR.,
Petitioner

v.

MCKINLEY SIMMONS,
Respondent

and

ESTATE OF GLADYS LOUISE BARCLAY
Respondent

On Petition for a Writ of Certiorari to the Supreme Court of Virginia

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PETITION FOR WRIT OF CERTIORARI

Samuel B. Davis, Jr.
Pro Se Petitioner
VAMC Building 148 Room A-173
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Hampton, Virginia 23667

QUESTIONS PRESENTED

1. Is the denial by the Supreme Court of Virginia of a petition for appeal of an order of the Circuit Court of the City of Newport News dismissing a petition for reinstatement entered over Petitioner's motion to present *ore tenus* evidence of fraud upon the court in the case of Davis v. Davis, Newport News Circuit Court Chancery No. 27095-RF pending upon Petitioner's motion to set aside the final decree of divorce on the grounds of fraud upon the court a denial of due process under the Fifth and Fourteenth Amendments to the Constitution of the United States?

PARTIES TO THE PROCEEDING

PETITIONER

S. B. Davis, Jr.

RESPONDENT

McKinley Simmons

Estate of Gladys Louise Barclay
Successor in interest to Louise Barclay Davis

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
JURISDICTION	1
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE PETITION	17
CONCLUSION	17
APPENDIX	18

TABLE OF AUTHORITIES

Constitution of the United States
Amendment 5, Amendment 14 18

JURISDICTION

This case comes to the Supreme Court of the United States as a petition for a writ of certiorari on a final order of the Supreme Court of Virginia entered on January 3, 2007 in a civil matter.

STATEMENT OF THE CASE

This is an appeal of a final order of the Supreme Court of Virginia (Exhibit No. 1) denying Petitioner an appeal of an order of The Honorable Charles E. Poston, Judge Designate for the Circuit Court of the City of Newport News in the case of McKinley Simmons v. S. B. Davis, Jr. et al Chancery No. 19129 denying reinstatement of the case (Exhibit No. 2).

This order arises from a petition for reinstatement filed by Petitioner (Exhibit No. 3). Petitioner seeks to set aside the order entered by The Honorable Randolph T. West on March 27, 2002 (Exhibit No. 4) for fraud upon the court. As basis for this order Judge West cites an order entered by Retired Judge Designate James C. Godwin in the divorce suit Louise Barclay Davis and the Estate of Gladys Louise Barclay, successor in interest, Chancery No. 27095-RF (Exhibit No. 5).

Petitioner alleges in the petition for reinstatement that there is no such order by Judge Godwin, or if there is it is being concealed from him. Petitioner has been hospitalized since April 22, 2004. His records in this suit were lost when he was forced from the marital residence by a five-unit police raid to enforce an invalid court order. Further records were lost when Petitioner's residence was entered by someone leaving no signs of forcible entry and transcripts and legal papers taken. A television set and a Seiko watch were also stolen. Petitioner did not report the theft to the police. When reviewing a petition for a writ of prohibition filed with this court Petitioner discovered the order (Exhibit

No. 5) had been filed as an exhibit in a petition to the Supreme Court of the United States. Petitioner had appeared at the hearing that produced that order. Paragraph No. 3 of the motion to reinstate states:

> 3. That fraud upon this Court in the case of Louise Barclay Davis and the Estate of Gladys Louise Barclay, successor in interest v. Samuel Bunyan Davis, Jr. Chancery No. 27095-RF is fraud upon the court in this case.

Petitioner filed a motion to allow him to present *ore tenus* evidence of fraud upon the court. It was denied, causing this appeal.

Petitioner and his wife had formed Virginia Real Estate Trust, a Real Estate Investment Trust. The Trust had a line of credit loan of $250,000 with Bank of Virginia (now Wachovia); Petitioner and his wife personally endorsed the note. The interest rate on that loan rose as rates nationwide rose. In August, 1981 the rate on the bellwether 30 year U. S. Government Bond was 14%; New York City prime rate was 22%. The Trust's rate was 17%. Petitioner and his wife personally obtained a line of credit loan of $250,000 from Old Point National Bank, secured by a deed of trust on their marital residence and their office building in Hilton Village in Newport News. Bank of Virginia was paid off. Petitioner and his wife began returning investor's money. Of the 4,460 shares outstanding, all but 911 shares had been redeemed when McKinley Simmons walked off the job at 644 27th Street.

McKinley Simmons was licensed by the City of Newport News as a Class A Contractor. Simmons was married but separated from his wife, thus prohibiting him from freely owning and conveying real property. Petitioner formed a land trust for him and all transactions were done in the name of "S. B. Davis, Jr. Trustee of Simmons Land Trust".

Petitioner was heavily involved with Simmons on construction projects. The East End of Newport News was blighted and many lots were owned by Newport News Redevelopment and Housing Authority. Lots were not sold for speculative building. Simmons asked Petitioner for a loan to build a house for investment. Petitioner required a commitment for a permanent loan. Simmons finally obtained a permanent commitment from Atlantic Permanent Savings and Loan Association, Petitioner having to drive to Virginia Beach to get the written commitment. Petitioner bought the lot from NNR&HA for $2,000 titled "S. B. Davis, Jr. Trustee of Simmons Land Trust".

When the house was about three weeks from completion Simmons told Petitioner that the house had been sold to a young couple who had been approved for their loan. Through his real estate broker, Simmons tried to get Petitioner to give him the excess over advancements. Petitioner refused on the grounds that the purpose of the financing was to increase Simmon's net worth to provide additional collateral for other involvements. Simmons walked off the job. The house was quickly vandalized and became a haven for drug addicts.

Petitioner had previously taken title in the trust name and financed 621 27th Street. The property was sold, Simmons taking back a first deed of trust payable to the land trust. The purchaser made monthly payments to Petitioner which were immediately paid over to Simmons. Payments stopped when Simmons abandoned 644 27th Street. Simmons requested Petitioner to call on the trustees under the deed of trust to foreclose and when he refused filed the suit which is the subject of this appeal (Exhibit No. 6). Petitioner filed an answer and crossbill (Exhibit No. 7).

Petitioner retained an attorney, paying a retainer of $15,000. The suit was referred to Commissioner In Chancery Clyde M. Weaver. Commissioner Weaver held a hearing and took the testimony of Simmons and Petitioner.

Petitioner's attorney demanded that he settle with Simmons for less than Petitioner claimed was owed. When Petitioner refused to settle his attorney petitioned the court for leave to withdraw. The presiding judge, the Honorable Randolph T. West granted the petition stating "If your client will not follow your advice, you are entitled to withdraw".

Petitioner had difficulty finding an attorney. He finally located one from Richmond, paying another retainer of $15,000. A hearing was scheduled before Judge West with the second attorney scheduled to appear. The second attorney was charged with unethical conduct by the Virginia State Bar and sent his wife, also an attorney. The second attorney was unable to continue. A third attorney, a friend of Petitioner, offered to represent Petitioner without fee. The case proceeded and various properties were liquidated.

Petitioner determined to find out why the purchasers did not sue Simmons and located them through the grantee index to deeds at Hampton Circuit Court. On a Saturday in late November, 1990 Petitioner asked the purchasers why they did not sue. They explained that they asked their real estate broker about suing Simmons. The broker gave them the name of a lawyer who would advise them without fee. They consulted that lawyer who told them it would be useless to sue as Simmons had no assets and would declare bankruptcy if they got a judgment. The lawyer said if he could ever be of help for them to call and gave them his card. The purchasers could not remember the lawyers name but the husband suddenly remembered the card, looked in his wallet and found it. He had kept the card for over two years.

Petitioner filed an ethical complaint against Clyde M. Weaver with the Virginia State Bar. The Bar said he was acting in a quasi judicial capacity and they had no jurisdiction. Petitioner then filed a complaint with the Judicial Inquiry and Review Commission which also refused to act. Weaver was removed as Commissioner and J. W. Hornsby, Jr. was appointed.

Petitioner then filed suit in Federal Court under the Racketeer Influenced and Corrupt Organization Act naming the Virginia State Bar as the Enterprise. He sued Simmons, his own and other attorneys and real estate brokers. All parties were served. A number of defendants filed motions to dismiss, but no one filed an answer. Petitioner amended his suit to add a charge of violation of the Civil Rights Act. All parties were re-served. More motions to dismiss were filed and the District Court dismissed the suit. Appeal was taken to the Fourth Circuit Court of Appeals which also dismissed. Petitioner was sanctioned $500 for filing a frivolous suit. Properties were liquidated for the sum of $96,959.17.

All matters concerning the ownership of these funds and their relationship to the total property of Petitioner and his ex-wife and the equitable distribution thereof are found in the suit Louise Barclay Davis v. Samuel Bunyan Davis, Jr. in the Circuit Court of the City of Newport News, Chancery No. 27095-RF, now pending upon Petitioner's motion to set aside the final decree of divorce on the grounds of fraud upon the court.

Fraud No. 1 The bill of complaint for divorce was filed on July 25, 1995 by Kenneth B. Murov, attorney for Louise Barclay Davis. There was no duplicate copy furnished and no payment of the sheriff's fee.

Fraud No. 2 This was committed by Clerk of Court Rex A. Davis when he gave Murov the date of November 2, 1995 for a *pendente lite* hearing in a case that had not been served and was not pending before the court.

Fraud No. 3 This was committed by Murov when he instructed a private process server to post the bill of complaint minus a subpoena in chancery and notice of *pendente lite* hearing.

Fraud No. 4 This fraud was committed jointly by Judge Robert P. Frank, Clerk of Court Rex A. Davis and Kenneth B. Murov, Esquire when the hearing was held on November 2, 1995. A court is not properly constituted without the consent and presence of the clerk. There was no proof of service of process in the file. The clerk should have refused to allow the judge to hold the hearing. Kenneth B. Murov, Esquire knew there had been no proper service of process.

Fraud No. 5 On November 7, 1995 Robert P. Frank, Chief Judge of the Seventh Judicial Circuit and trial judge in Davis v. Davis notified the Supreme Court of Virginia that all judges of the circuit had recused themselves (Exhibit No. 8).

Code of Virginia Section 17.1-105
Designation of judges to hold court and assist other judges.

> B. If all the judges of any court of record are so situated in respect to any case, civil or criminal, *pending* in their court as to render it improper, in their opinion, for them to preside at the trial, unless the cause or proceeding is removed, as provided by law, *they shall enter the fact of record* and the *clerk of the court shall at once certify the same to the Chief Justice of the Supreme Court*, who shall designate a judge of some other court of record or a retired judge of any such court to preside at the trial of such case.

The case was not pending. There was no instrument of recusal entered of record. The clerk of court did not certify the recusal.

Fraud No. 6 On November 17, 1995 entered an order based on the November 2, 1995 hearing (Exhibit No. 9). This is the first order in this case and contains no statement of how the court acquired jurisdiction. The notation at the bottom of the order "the Defendant was

not present but was duly notified" proves that Judge Frank knew there had been no service of process.

Fraud No. 7 At approximately 5:00 p.m. on December 8, 1995 Petitioner received a very loud knock on his door from a Colonial Williamsburg "S" knocker. He asked through the door who it was. The reply was "police". Petitioner asked if they had a warrant receiving the reply "We have a court order". When Petitioner did not respond an officer said "Mr. Davis, you might as well open the door, we have a key". Petitioner turned the knob to open the door. Officers slammed the door open, throwing Petitioner into the hall wall. Terrified, Petitioner ran to his bedroom with the officers in hot pursuit. Two officers grabbed Petitioner, one on each arm. Petitioner was asked what he was doing, replying that he was getting a handkerchief. The officers relaxed their grip and watched him closely as he removed a handkerchief from a small bureau drawer. Petitioner returned to the living room and picked up his wallet and keys from a table beside his chair. He was asked what he was doing, replying that he was leaving. An officer "Mr. Davis, if you leave and come back you will be charged with trespassing". Petitioner got a leather jacket from the hall closet and opened the front door. His exit was blocked by two officers standing side by side. Petitioner forced his way between them. Petitioner was preparing to leave in his car when an officer from inside the house called out "Mr. Davis...come back...come back". Petitioner had to drive over the lawn to get by police cars in the driveway. Under the Freedom of Information Act Petitioner got a copy of the police log of the incident (Exhibit No. 10). The call was received at 1638 (4:38 p.m.). The first unit was dispatched at 1644 (4:44 p.m.). While this raid is not technically fraud upon the court, the fact of its existence would have been known to the Supreme Court of Virginia.

Fraud No. 8 On December 22, 1995 Associate Justice A. Christian Compton appointed Retired Judge James C. Godwin to preside (Exhibit No. 11). There is no written designation of Justice Compton by Chief Justice Harry L. Carrico. The designation was made without the certification by the clerk of court that a suit was pending and that all judges of the circuit had recused themselves.

Fraud No. 9 This fraud was committed jointly by lawyer Kenneth B. Murov and Clerk of Court Rex A. Davis. Lawyer Murov applied for a date for a *pendente lite* hearing with no intention of obtaining the personal service mandatory for such a hearing. Clerk Davis obtained from Retired Judge James C. Godwin a date he could come from Suffolk on a suit that had not been served and of which he had knowledge of a previous invalid order by Judge Robert P. Frank.

Fraud No. 10 Lawyer Murov furnished private process server Ned Massey III with the Bill of Complaint minus the Subpoena In Chancery and notice of *pendente lite* hearing and instructed him to post and videotape Petitioner removing it from the door. On May 7, 1995 Massey did as instructed. On May 9, 1995 he filed the Proof of Service (Exhibit No. 12).

Fraud No. 11 On May 10, 1996 Retired Judge James C. Godwin held a *pendente lite* hearing in a case in which the only service of the bill of complaint is by videotaping Petitioner removing it from the door. Clerk of Court Rex A. Davis is guilty of fraud upon the court for letting him do it.

Fraud No. 12 On June 12, 1996 Retired Judge James C. Godwin entered a *pendente lite* order based on the May 10, 1996 hearing (Exhibit No. 13). This order contains

the language "personal service on Defendant" This order is fraud upon the court by Retired Judge James C. Godwin, Clerk of Court Rex A. Davis and lawyer Kenneth B. Murov. This ruling that posting and videotaping is the basis for all future actions in this case and the taking of property of Petitioner and Virginia Real Estate Trust. Petitioner says that such a ruling is not the law in the Commonwealth of Virginia or the Seventh Judicial Circuit of Virginia.

Fraud Mo. 13 A Property Inventory was filed by Louise Barclay Davis.

Property Item	**Date of Purchase**	**Wife Wants**
40 Barclay Road, NN, VA marital home and road to it	lot before marriage home after	100%

By deed dated June 27th, 1958 recorded in the Clerks Office of the Circuit Court of the City of Newport News in Deed Book 111 at page 356 Maude M. Barclay conveyed the property to Louise B. Davis and Samuel B. Davis, Jr., wife and husband as tenants by the entirety

In depositions taken before Commissioner in Chancery E. Thomas Cox on December 16, 1996, on page 37 of the transcript Louise Barclay testified as follows:

Q. Now what year – do you remember what year your mother gave you the land where your current residence is located on? Do you remember when that happened?

A. Let me think.

THE COMMISSIONER: With reference to the time you were married.

THE WITNESS: Excuse me. It was probably the end of the '40s or the early '50s.

BY MR. MUROV:

Q. It was before you got married?

A. Oh, yes.

Q. And the lot was undeveloped at the time that your mother gave it to you?

A. Yes; it was raw property.

Q. What year did you and Sam build a house on there?

A. Probably '59.

Q. When you built the house, did you title the property in both your names as Tenants by the Entirety with the Right of Survivorship?

A. Yes.

Q. Is that how it is currently titled?

A. Yes.

Q. It is currently titled that way, correct?

Petitioner avers that if Louise Barclay Davis lived she could be charged with perjury. Kenneth B. Murov is guilty of subornation of perjury. In Virginia there is no statute of limitations on a felony.

Property Item	Date of Purchase	Wife Wants
628 Lee Street HAMPTON, VA	after marriage	50%

Property was titled "S. B. Davis, Jr. and Louise B. Davis, Trustees of Virginia Real Estate Trust"

515 Homestead Avenue HAMPTON,VA (rental property) H receives the rent	after marriage	50%

Property was titled "Virginia Real Estate Trust"

Payoff of VRET loan, $10,000	after marriage	W seeks 100%

Louise Barclay Davis is claiming 100% of money she admits was property of Virginia Real Estate Trust

Virginia Real Estate Trust (We ask that commissioner make no disposition since we don't know value)	after marriage	

Fraud No. 14 After a hearing on December 16, 1996 lawyer Kenneth B. Murov wrote a letter to Commissioner in Chancery E. Thomas Cox (Exhibit No. 14). Commissioner Cox considered this letter as evidence and marked it Plaintiff's Ex 15. This letter asks for complete ownership of 40 Barclay Road. If Murov knew that the property was held by Petitioner and his wife as tenants by the entirety under a deed from wife's mother, Maude M. Barclay he is guilty of a felony. This letter also states that 628 Lee Street, Hampton, Virginia and 515 Homestead Avenue, Hampton, Virginia are "jointly titled Real estate". If Murov knew that 628 Lee

Street was titled "S. B. Davis, Jr. and Louise B. Davis, Trustees of Virginia Real Estate Trust" and 515 Homestead Avenue was titled "Virginia Real Estate Trust" he is guilty of a felony. In Virginia there is no Statute of Limitations on a felony.

Objection to Report Commissioner in Chancery E. Thomas filed his report. Petitioner filed an objection to the report (Exhibit No. 15). The objection states:

> 3. The report of the Commissioner does not address the matter of approximately $75,000 held by this court in a suit styled McKinley Simmons vs. S. B. Davis, Jr.

Final Decree The final decree of divorce was entered on April 10, 1997 (Exhibit No. 16). The decree states:

> It is, accordingly, ADJUDGED, ORDERED and DECREED that the report of E. Thomas Cox, Commissioner in Chancery, be and it is hereby approved, ratified and confirmed in all respects, and ...

The decree does not ***incorporate by reference*** the report into the decree. The equitable distribution of property is not ***bifurcated.*** The decree becomes the final adjudication of all matters in the report. The decree could have bifurcated matters of equitable distribution which keeps it open for further examination. This was not done. Petitioner avers that if any matters of equitable distribution are considered the entire matter should be re-examined, including Plaintiff's perjured testimony and Murov's subornation thereof.

The decree states:

> Nothing further remaining to be done in this matter, it is ORDERED stricken from the docket and filed

among the ended causes

The decree does not address the funds in Simmons v. Davis. The decree remained under the control of Retired Judge Designate James C. Godwin for 30 days after entry. His designation as substitute judge expired for all purposes except those ordered by the Court of Appeals of Virginia. The final decree was appealed to the Court of Appeals of Virginia which dismissed. Petition for appeal was filed with the Supreme Court of Virginia which was denied. On September 3, 1998 a petition for a writ of certiorari *in forma pauperis* was filed with the Supreme Court of the United States.

Fraud No. 15 Gladys Louise Barclay died November 14, 1996. On August 24, 1998 Kenneth B. Murov filed a motion to reinstate the suit on behalf of the estate (Exhibit No. 17). He cites the order of the Court of Appeals of Virginia to determine attorney fees and adds "and other issues in this matter". That addition is fraud upon the court.

Fraud No. 16 On August 24, 1998 Kenneth B. Murov filed a notice and motion for relief (Exhibit No. 18), The Clerk's time stamp on this and the motion to reinstate are identical. Petitioner avers that the deputy clerk would not have accepted the motions, stamped and filed them without a cover letter and payment of the fee for reinstatement. Petitioner has tried unsuccessfully to obtain a copy of the letter from Clerk Davis.

Service of process Petitioner had a stroke on September 5, 1998 and lay unconscious on his bedroom floor for five days. Four newspapers accumulated on the driveway. A fifth was placed on the top of Petitioner's car. A neighbor saw it and called 911. On September 10, 1998 Petitioner was taken to the hospital. Petitioner received extensive surgery for an ulcer on his buttocks developed from his unconscious stay on

the floor. Petitioner remained in the Intensive Care Unit until 4:30 p.m. on September 18, 1998 when he was moved to a private room. At 5:05 p.m. on that date Petitioner was served with Notice and Motion for Relief by Ned Massey III in Room 439 (Exhibit No. 19).

Fraud No. 17 Petitioner filed a motion to quash and in it asked for a continuance based on his hospitalization (Exhibit No. 20). Judge Godwin refused the continuance writing across the bottom of the motion :"No appearance no Drs certificate Nothing to cause continuance other than mere allegation". Judge Godwin would not have denied the continuance and made the notation without argument from lawyer Murov that there was no proof of current hospitalization, a fact known to him to be false.

Fraud No. 18 Judge Godwin held the hearing on October 5, 1998. He entered an order on the hearing on November 9, 1998 (Exhibit No. 21). Petitioner avers that Paragraph 3, awarding attorney fees, is the only valid paragraph in the order. Particularly egregious is the following language in Paragraph 2:

> 2. That Plaintiffs' and Defendant's interest in the assets of the Virginia Real Estate Trust having previously been determined to be 50/50, ……

This is the first order after entry of the final decree, which made no such determination. Paragraph 9 purports to keep the cause on the docket. There is no order of reinstatement. Clerk of Court Rex A. Davis could have placed the case on the docket for determination of attorney fees. He committed fraud upon the court when he allowed Judge Godwin to consider matters other than attorney fees.

Fraud No. 19 In the spring of 1999 Petitioner continued to press Clerk Davis for an order of reinstatement that would

Fraud No. 19 In the spring of 1999 Petitioner continued to press Clerk Davis for an order of reinstatement that would justify the order entered November 9, 1998 based on the October 5, 1998 hearing. Clerk Davis sent a copy of Murov's letter and a copy of an order of reinstatement. This letter with the handwritten notation was Exhibit No. 9, page 22a in a petition to this court for a writ of certiorari (Exhibit No. 22). The notation "Called 2/4/98" led Petitioner to believe that the date of the letter, January 26, 1999 was a typographical error. Much later Petitioner got a true copy of the letter (Exhibit No. 23). Included with it was a copy of a postit implying that was how the notation was made (Exhibit No. 24).

Clerk Davis sent a copy of the order of reinstatement. This was a photo copy of the clerk's order book with the black edges. Petitioner did not observe that the order was entered March 24, 1999 (Exhibit No. 25).

The Supreme Court of the United States refused to consider the petition for a writ of certiorari and Petitioner petitioned for a rehearing. While this was pending Petitioner received a motion for relief and notice of a hearing on December 3, 1999. Petitioner moved to disqualify Judge Godwin and counsel Kenneth B. Murov. The hearing was held and on January 6, 2000 Judge Godwin entered the order (Exhibit No. 5). Petitioner appealed to the Court of Appeals of Virginia which dismissed on procedural grounds. The Supreme Court of Virginia upheld the ruling. Petitioner petitioned the Supreme Court of the United States for a writ of certiorari, contesting the procedural grounds. It was docketed as No. 00-5609. This is the appeal in which Exhibit No. 22 was Exhibit No. 9.

The Supreme Court of the United States denied the petition for a writ of certiorari. On May 29, 2001 Petitioner filed a motion for reinstatement of this case on the docket of

the court. The Supreme Court of Virginia designated retired Judge James C. Godwin to preside. Judge Godwin reinstated the case on the docket. On June 4, 2001 Petitioner filed a third petition for a writ of certiorari which was docketed on June 8, 2001 as No. 00-1825. This petition charged that the use of retired judges violated the constitutional right of equal protection of the laws as they are not subject to reappointment by the General Assembly as are active judges, they are not subject to discipline and holding no office are not subject to impeachment. The Supreme Court of the United States denied the petition.

Petitioner filed a motion for Judge Godwin to disqualify himself or to recuse himself. There has been no ruling on that motion. The case is pending.

The Estate filed a petition to intervene in McKinley Simmons v. S. B. Davis, Jr. which was granted. Petitioner filed a motion for Judge Randolph T. West to recuse himself. Petitioner filed a cross-claim. A hearing was held and an order entered giving the estate half of the money (Exhibit No. 26). Petitioner was unable to appeal because he could not post the appeal bond, set at twice the amount of Petitioner's interest. Petitioner filed a motion to reinstate which brings us to the current controversy.

On December 3, 2002 Virginia Real Estate Trust filed a petition to intervene in the reopened divorce suit (Exhibit No. 27). The petition documents with deeds the ownership of 628 Lee Street and 515 Homestead Avenue. On February 14, 2003 Judge Godwin denied the petition (Exhibiy No. 28).

REASONS FOR GRANTING THE PETITION

Petitioner avers that he has been deprived of property without due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

The lack of due process complained of is the refusal of the trial court to allow presentation of evidence of fraud upon the court in the case of the divorce suit, Davis v. Davis. This court has no evidence before it and can only rely on **ORDERS** entered in other cases by courts of equal dignity. This court is not permitted to examine and base its decision on pleadings, transcripts and in this case the report of the Commissioner in Chancery because it was not **INCORPORATED BY REFERENCE** into the final decree.

Intervenors are trying to do what Louise Barclay Davis could not have done had she lived. Any motion by her would have opened up all matters of equitable distribution, including her perjured testimony.

CONCLUSION

Petitioner prays that the Court issue a Writ of Certiorari to the Supreme Court of Virginia directing it to remand this case to the Circuit Court of the City of Newport News with instructions to reinstate the case on the docket and have a trial on the merits.

Respectfully submitted,

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